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SENATE

REPORT
99-279

AUTHORIZING THE CHEROKEE NATION OF OKLAHOMA TO DESIGN AND CONSTRUCT HYDROELECTRIC POWER FACILITIES AT W.D. MAYO LOCK AND DAM

APRIL 10 (legislative day, APRIL 8, 1986).—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1724]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1724) to authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric power facilities at W.D. Mayo Lock and Dam, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

The amendments are as follows:

(1) On page 2, line 3, strike the word "shall" and insert in lieu thereof the following phrase "is authorized to"

(2) On page 5, delete Sec. 4., by striking out lines 18 through 24, and on page 6, strike out lines 1 through 5.

PURPOSE

S. 1724 would authorize the Cherokee Nation to design and construct hydroelectric generating facilities which will be an integral part of the W.D. Mayo Lock and Dam on the Arkansas River near Sallisaw, Oklahoma. The Cherokee Nation will accomplish the financing, engineering design and actual construction of the facility without the requirement of Federal funds. However, in order to assure general compliance with existing Federal policy and regulations, the bill provides that the design and construction will be approved and inspected by the United States Army Corps of Engineers. Further, at the completion of the construction, the Corps of Engineers will have title to the facility transferred to it and will

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own, operate and maintain the facilities out of funds realized from the sale of the power.

The Southwestern Power Administration will market the power produced at the facility in accordance with Section five of the 1944 Flood Control Act. It is authorized by the bill to repay the Cherokee Nation its costs for design and construction at such time as revenues may be realized from the sale of the power.

The generating plant will provide needed low cost power to the Southwest Federal Power System. It will benefit the Cherokee Nation by providing jobs and facilities for the economic advancement of the Tribe and its members.

BACKGROUND

The W.D. Mayo Lock and Dam 14 are located on the Arkansas River alongside the Cherokee Indian Nation. Late in 1983, the Tribe learned of Federal studies recommending that a hydroelectric generating facility be added to the dam.

The Tribe called on the Council of Energy Resource Tribes (CERT) for assistance. After the study, CERT recommended a low head power facility of 40 NWE. After a preliminary decision to pursue the project and considerable study, the Tribe decided that it could arrange to finance the project through private sources and transfer maintenance and operation of the facility to the Corps of Engineers. The Southwestern Power Administration would market the power. Although Federal funds would not be needed this would require the authorization of Congress. Hence, this bill.

The two other Indian tribes in the area, the Choctaw and Chickasaw support the project.

The facility will include three bulb turbines with a capacity of 33 megawatts electric (MWE), powerhouse, headrace and tailrace channels, sub station and support facilities. The dimensions are 200 feet by 200 feet by 100 feet high. A new transmission line will be required which will extend three miles and have a capacity of 161 kv.

The Cherokee Nation will sell bonds for the construction of the facility. The revenues from the sale of power will pay the bonds. And money will be saved over the amount estimated for construction by the Corps of Engineers.

LEGISLATIVE HISTORY

S. 1724 was introduced by Senator Boren, for himself and Senator Nickles on October 1, 1985 (legislative day September 30, (1985). A companion bill, H.R. 3601, was introduced by Representative Synar. That bill is identical to S. 1724 and on October 22, 1985, was referred to the House Committee on Interior and Insular Affairs and the House Committee on Public Works and Transportation.

Also, S. 366, a bill introduced by Senator Abdnor specifically authorizes the facility at W.D. Mayo Lock and Dam. The bill is cosponsored by Senators Andrews, Gorton, and Murkowski of this Committee and provides $119 million for cost of construction. S. 366 was included in an omnibus bill, S. 1576 which recently passed the Senate.

COMMITTEE RECOMMENDATIONS

The Select Committee on Indian Affairs, a poll of its members completed on March 28, 1986, by a majority vote, recommends that the Senate pass S. 1724, as amended.

COMMITTEE AMENDMENTS

The amendment deletes Section four which specifically authorizes the Cherokee Nation to issue tax exempt bonds to finance the project and, further, to make clear the Corps of Engineers is "authorized" but not "mandated" to enter into the construction agreement with the Tribe.

This amendment was requested by the Administration. The Cherokee Nation also requested this amendment on the grounds the provisions of Section four were unnecessary in light of the provisions of the Indian Tribal Governmental Tax Status Act enacted in the 97th Congress (P.L. 97-473).

COST AND BUDGETARY CONSIDERATIONS

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, March 26, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1724, a bill to authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric power facilities at W.D. Mayo Lock and Dam, as ordered reported by the Senate Select Committee on Indian Affairs, March 21, 1986. We estimate that enactment of this bill will result in no net additional costs to the federal government or to state or local governments.

S. 1724 would authorize the Cherokee Nation to design and construct hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River near Sallisaw, Oklahoma. It is expected that the Cherokee Nation will be able to accomplish financing, engineering design and construction of the facility without federal financial assistance.

The federal government, acting through the Army Corps of Engineers, would approve and inspect the design and construction plans. Once construction is completed, probably in the early 1990s, the Corps would own, operate, and maintain the facilities. The Southwestern Power Administration would be authorized to market the power produced by the facilities in accordance with Section 5 of the 1944 Flood Control Act. Revenues generated from the sale of power from these facilities would be used to cover the Corps' annual operation and maintenance costs and to repay the Cherokee Nation for all capital investment costs plus royalties. It is

expected that revenues realized by the sale of power will be sufficient to cover these costs.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 1724, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has received correspondence from the Executive Branch.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, DC, February 19, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, Washington, DC.

DEAR MR. CHAIRMAN: This is in further reply to your letter of October 28, 1985, concerning the proposal of the Cherokee Nation to construct hydroelectric power facilities at W.D. Mayo Lock and Dam.

Your understanding of my previous involvement with this proposal is correct. On May 2, 1985, officials from the Cherokee Nation presented this plan to representatives of pertinent Federal agencies, in a meeting held in my office.

Although I strongly support increased non-Federal participation in the development of water projects, there are some aspects of S. 1724 that are of concern. The Administration would object to enactment of S. 1724 unless it is amended to eliminate authorization for use of tax-exempt bonds by the Cherokee Nation to finance the project. Moreover, the Administration would object unless S. 1724 is clearly written to allow, but not mandate, the project and the agreement with the Cherokee Nation.

My enclosed comments on the questions you submitted present this concern, and identify the areas where S. 1724 and S. 1567 may not be compatible. I hope these comments will help the Committee resolve any remaining questions with respect to this legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

ROBERT K. DAWSON,
Assistant Secretary of the Army (Civil Works).

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